

COIN

COMMISSION OF INQUIRY NOW

Justice for victims of Catholic Clergy Sexual Assault in Victoria

The Hon Georgie Crozier MLC,
Chairman, Family and Community Development
Committee, Parliament of Victoria, Spring Street
MELBOURNE VIC 3000

6 September 2012

Dear Ms Crozier,

**Inquiry into Handling of Child Abuse by Religious and other Organisations -
COIN Submission No 14 (Addendum to Submission No 5)
Vicarious Liability: UK Decision: JGE v Trustees Portsmouth**

This addendum submission draws the Committee's attention to the recent decision of the England and Wales Court of Appeal JGE v Trustees of the Portsmouth Roman Catholic Diocesan¹. The decision's first page is attached.

This case was discussed in COIN's submission No 5 regarding vicarious liability. In this appeal, the UK Court of Appeal dismissed the Church's appeal and endorsed the decision of the High Court in full that found for the victim.

Ward LJ supported the High Court's use of the "close connection"² test, saying:

The test I set myself is whether the relationship of the bishop and Father Baldwin is so close in character to one of employer/employee that it is just and fair to hold the employer vicariously liable.

The Court of Appeal affirmed the High Court's view that vicarious liability extends to persons who are employed through other means than that of a traditional employment contract. This effectively strikes down the previously established defence that priests are not employees of the Church and thus the Church cannot be held vicariously liable for the priest's actions.

This decision is even stronger evidence that Victoria's laws are lagging behind that of other similar common law jurisdictions such as Canada and the United Kingdom. COIN

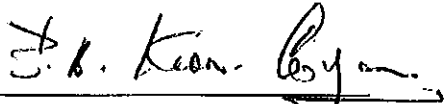
¹ [2012] EWCA Civ 938.

² See *Bazley v Curry* [1999] 2 SCR 534; *Lister v Hesley Hall* [2001] UKHL 22.

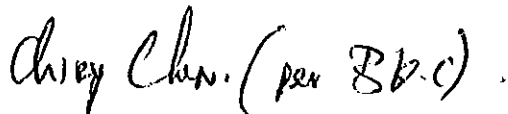
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repeats its submissions in Submission No 5 and requests urgent law reform overcome the current artificial restraints of Victorian rules concerning vicarious liability.

Yours faithfully,



Dr Bryan Keon-Cohen AM QC
President, COIN



Mr Chiry Chen, Law Student, , Faculty of Law,
La Trobe University, Bundoora.

Enc: *JGE v Trustees Portsmouth Roman Catholic Diocesan* (p 1)



Neutral Citation Number: [2012] EWCA Civ 938

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MR JUSTICE MACDUFF
H009 CX03679

Case No: B3/2011/2210

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/07/2012

Before:

LORD JUSTICE WARD
LORD JUSTICE TOMLINSON
and

LORD JUSTICE DAVIS

Between:

JGE

- and -

The Trustees of the Portsmouth Roman Catholic Diocesan Trust

Respondent

Appellant

Lord Faulks QC and Mr Nicholas Fewtrell (instructed by CCLA Services Ltd) for the
appellant
Miss Elizabeth Anne Gumbel QC and Mr Justin Levinson (instructed by Emmott Snell &
Co) for the respondent

Hearing date: 17th May 2012

Approved Judgment

Judgment approved for the court by Lord Justice Ward

JGE v Trustees of Portsmouth Roman Catholic Diocesan Trust

Lord Justice Ward:

1. This appeal gives rise to a troublesome question of vicarious liability. The preliminary issue which falls for decision is "whether in law the second defendant [the Trustees of the Portsmouth Roman Catholic Diocesan Trust] may be vicariously liable for the alleged torts of Father Baldwin", a parish priest in the diocese. On 8th November 2011 Mr Justice MacDuff determined that issue in favour of the claimant.

The background

2. The claimant, who should remain anonymous, was born on 20th November 1963 so she is now 48 years of age. In May 1970 when she was 6½ years old, she was placed in a children's home run by the nuns of a convent which was subject to the direction and control of the English Province of Our Lady of Charity, the first named defendant. There she remained for two years before being returned to her mother. The particulars of claim allege that whilst she was there she was beaten by the nun in charge of the home and she claims damages from the Sisters of Charity.

3. The particulars of claim also allege that the second defendants "operated and/or managed and/or were responsible for" a church in the diocese and that "at all material times Father Wilfred Baldwin was the parish priest at the church" and that "accordingly Father Baldwin was in the service of the second defendants and subject to their direction and control." It is said that Father Baldwin was regularly invited or permitted by the nuns to visit the children's home and did so in the course of his duties as a priest for the second defendants. Whilst a resident at the home the claimant was a parishioner of the church. It is then alleged that she was sexually abused and assaulted by Father Baldwin forcing the claimant to perform oral sex on him and masturbate him. Father Baldwin also allegedly performed sexual acts on the claimant and raped her many times, including on the day of her first holy communion when Father Baldwin raped the claimant in the robing room at the church after conducting the service. The particulars of claim allege that the second defendants entrusted the safe keeping and care of the claimant to Father Baldwin, delegated those tasks to him and undertook their care and safekeeping of the claimant through the services of Father Baldwin. But, and this is the important allegation for present purposes, it is also alleged that the sexual abuse and assaults perpetrated by Father Baldwin were committed in the course of or were closely connected with Father Baldwin's employment/duties and that, in the premises, the second defendants are vicariously liable for the sexual abuse by Father Baldwin and for the injury and damage which the claimant suffered as a result.

4. In fairness to the second defendants I should set out their defence. Although it is admitted that the parish church was a part of the Roman Catholic Diocese of Portsmouth, the second defendants deny that they ever managed, operated or were responsible for the church, the responsibility resting at all material times with the parish priest. It is denied, moreover, that Father Baldwin was at the material time the parish priest at the church for he did not assume that office until in or around September 1972, some months after the claimant had left the children's home. The second defendants say that at the material time Father Baldwin was in fact working as the Vocations Director in an altogether different part of the diocese. Their case is that